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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:4497 of 2006

DATED:09-03-2006

Between:

Mr.V.S.Keshkar

..... PETITIONER

AND

1. Union of India, rep.by its Secretary,

Ministry of Home, New Delhi and 3 others.

.....RESPONDENTS

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ORAL ORDER:

Heard learned counsel for the petitioner and Mr.A.Rajasekhar Reddy, learned Standing Counsel for the respondents.

This writ petition is filed questioning the order of compulsory retirement dated 20-02-2006 on the following grounds:

"a) The charge sheet did not setout the necessary particulars.

The charge is vague, invalid and as such the entire proceedings are vitiated.

b) The material documents were not supplied to the charged official.

c) The drawing and disbursing officer who is the authorized officer for drawing and disbursing is not made a party

d) The auditors report was not included in the enquiry proceedings.

e) The entrustment was not proved.

f) As per Rule 92 of the Receipts and Payment Rules, it is the duty of the head of office or D.D.O, for the amounts drawn on a bill until paid to the person entitled, to ensure that the correct procedure is followed. In the instant case the DDO was not at all questioned.

g) None of the prosecution witnesses or the exhibits marked have pointed out any guilt of the charged official.

h) The enquiry report did not give a finding as to who is responsible for the over writings.

i) The evidence of the defence witnesses who spoke about the innocence of the petitioner was deliberately ignored.

j) The evidence of P.W.12 that no amount was handed over to the petitioner for disbursement in August and October 2003 was ignored.

k) The disbursement made by Head Constable B.P.Mandal and constable P.Nobulu was ignored and the petitioner was implicated.

l) There was no office order detailing the petitioner as disbursing officer.

m) According to the prosecution the alleged irregularities took place during August and October 2003, during which period the petitioner was on leave. Still the petitioner is made a scape goat."

The petitioner, in paragraph 5 of the affidavit, would state that he has a statutory right of appeal to the second respondent who is located at New Delhi within 30 days, and that the final order dated 20-02-2006 was served on him on 04-03-2006. He would contend that since the impugned order dated 20-02-2006 is arbitrary and illegal and since the petitioner would need some time to prefer an appeal and as the infractions committed by the respondents would show that

the petitioner has a fair chance of success in the appeal, his being retired from service would defeat the very purpose of filing an appeal.

The contentions urged for not availing the alternative remedy of a statutory appeal cannot be accepted for in case the petitioner succeeds in the appeal, the impugned order dated 20-02-2006 would be set aside and he would be entitled to be reinstated into service with full backwages. With regards the merits of the several contentions urged since these are all matters, which can also be examined by the second respondent appellate authority, I do not consider it appropriate to exercise the discretionary jurisdiction of this Court, under Article 226 of the Constitution of India, and interfere in such matters.

Leaving it open to the petitioner, if he so chooses, to prefer an appeal to the second respondent, the writ petition is dismissed at the stage of admission. No order as to costs.

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09th March, 2006

SKM